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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,914	03/31/2004	Matthew Seelig	A-03.78	5072
7590 02/07/2006			EXAMINER	
Arthur Jacob 25 East Salem Street P.O. Box 686 Hackensack, NJ 07601			SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/813,914	<b>Applicant(s)</b> SEELIG ET AL.	
	<b>Examiner</b> Richard R. Shaffer	<b>Art Unit</b> 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>2/3/2006</u> . |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/31/2004</u> . | 6) <input type="checkbox"/> Other: _____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

During a telephone conversation with Arthur Jacob on February 3rd, 2006 a provisional election was made with traverse to prosecute the invention of an instrument for gripping an orthopaedic fixation, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-14 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Drawings***

The drawings are objected to because of the following:

- **"110"** is not consistent between **Figure 2** and **Figures 3-5**
- **"62"** is also not correct between **Figures 2** and **4**
- Technical informalities (see attached Notice of Draftsperson's Patent Drawing Review)

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

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prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The abstract of the disclosure is objected to because it is written like a claim. Correction is required. See MPEP § 608.01(b).

### ***Claim Objections***

Claims 6 and 7 are objected to because of the following informalities: Claim 6 recites limitations directed towards the pin and then relates limitations of the plunger and gripping surfaces in relation to them. Because applicant has not positively recited a pin in the claims that precede claim 6, this is improper. Examiner has treated claims 6 and 7 as a combination claiming both a pin and instrument together for prosecution. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lane (US Patent 6,066,143).

Lane discloses an instrument (**20**) comprising: a first handle (**1**); a second handle (**4**) pivotally mounted to the first handle and movable between a first and second position; a plunger (**9**) mounted to the first handle member and coupled to the second handle member in order to move when the second handle member is moved between the first and second positions; a gripping mechanism including first (**2**) and second (**10**) gripping elements; the first gripping element is integral with the first handle member (**Figure 1**); the second gripping element includes a gripping finger that is mounted (due to **9** being mounted) to the first handle for movement; a linkage system {pivot pin (**5**) and actuator arm (**7**) integrally carried by the second handle member for advancing the plunger end (**8**)} couples the second handle with the gripping finger for proper movement and thus acts; the gripping surface and plunger both have partially cylindrical contours complementary (**Figures 3 and 4** are best) to a pin (**23**) also with a cylindrical contour (It should be noted that cylindrical is interpreted as a structure being tubular with a circular cross-section. Since the pin has several "circular cross-sections" near the projecting portion, it can be interpreted as having a cylindrical contour. It is also clear

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from the drawing that the gripping and plunger surfaces fit snugly about the cylindrical contour.); and a spring biasing mechanism (no reference character, but the spring is found between the two handle portions 1 and 4 coupling the bases of each).

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday during (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Richard Shaffer  
February 3<sup>rd</sup>, 2006



EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER